No. 85-1496 (2)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

PEARL ALPERSTEIN, et al.,

Petitioners,

v.

THREE LAKES WATER AND SANITATION DISTRICT,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

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PEARL ALPERSTEIN, et al.,

Petitioners,

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THREE LAKES WATER AND SANITATION DISTRICT,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

The respondent, Three Lakes Water and Sanitation District, requests that the Petition for a Writ of Certiorari be denied. Respondent is satisfied with petitioners' statement of the question presented for review and the statement of grounds on which the jurisdiction of this Court is invoked, and respondent does not include these statements as permitted by U.S. Sup. Ct. Rule 34.2.

OPINIONS BELOW

The opinion of the Colorado Court of Appeals has been published as *Alperstein* v. *Three Lakes Water and Sanitation District*, 710 P.2d 1186 (Colo. App. 1985). Respondent also includes in its Appendix the Order of the Colorado Supreme Court denying the Petition for Certiorari filed with that court.

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CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

In addition to the Colorado statutes set forth in the petitioners' Appendix, the District includes §39-10-103, C.R.S.

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STATEMENT OF THE CASE

The Colorado Court of Appeals' decision includes a succinct statement of the case (see Appendix to this Brief, pp. B-1 through B-4), and in the interest of brevity the District does not repeat those facts here. However, the petitioners' Statement of the Case contains several significant omissions and misstatements which will be discussed.

Petitioners assert to this Court that they are merely owners of "cabins in the Grand Lake, Colorado area" (Petition, p. 10). In fact, the petitioners' group is composed of full and part-time residents of the Three Lakes District who own property on which are located "businesses. dwellings, and other inhabited premises", as they admitted in their Complaint (Vol. I, p. 76). Petitioners use individual sewer systems, such as septic tanks, leach fields, holding tanks, and other individual systems for the sewage from their businesses and residences. Evidence in the record indicates that the entire Three Lakes area is generally unsuited for the use of these individual sewer systems, that such sewer systems are likely to fail, and that their

continued use constitutes a hazard to public health and will lead to increasing water quality problems (Vol. I, pp. 143-145, 149-150, 202 and 214). Both the District Engineer for the Colorado Department of Health and the Grand County Sanitarian recommended, for the protection of public health, that the use of the individual sewer systems be abandoned and that the District require connection to the District's main sewer lines of all businesses and residences on property within 400 feet of those sewer lines.

Petitioners claim that the District gave "false" notice, yet they fail to tell this Court that owners of property within the District had notice of the connection requirement as early as 1972. The District submitted to the Grand County Commissioners for their review and approval a comprehensive master plan for construction and operation of the District's regional public sewer system. The master plan provided that all existing and future residences and businesses would be required to connect to the District's regional system as soon as local sewage collection lines were completed (Vol. I, pp. 303-304). Public notice of the master plan was given and the county commissioners approved the master plan at a public hearing on March 13, 1973 (Vol. I, pp. 108, 109, 112).

Contrary to petitioners' statement, the Colorado Court of Appeals did not rule "that the state and federal constitutions do not require procedural due process" (Petition, p. 11). Rather, the Colorado Court of Appeals, citing *Hutchinson* v. *City of Valdosta*, 227 U.S. 303 (1913) and the opinions of state supreme courts, held that personal notice and a separate evidentiary hearing were not required by the federal or state constitutions before compelling connection to a public sewer system.

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REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

I. The Colorado Court of Appeals' Decision Does not Conflict with *Mennonite Board of Missions* v. *Adams*.

Petitioners' question presented for review is really two separate questions, the first of which is whether the applicable Colorado tax statutes provide for a tax sale of petitioners' property without notice and hearing on the connection costs. In their effort to convince this Court to grant certiorari, petitioners claim that the Colorado court decisions conflict with *Mennonite Board of Missions* v. *Adams*, 462 U.S. 791 (1983), in which this Court struck down an Indiana statute which did not provide the mortgagee of real property with adequate notice of a tax sale of that property. Petitioners assert that their properties can be sold for the connection costs without ever being given notice or an opportunity to contest such costs. That assertion is simply untrue.

The Colorado Legislature has provided that the District's costs of connecting owners' properties to the public sewer are to be incorporated into the Colorado tax assessment and collection procedures. §§32-10-117(5) and 32-10-121, C.R.S. Petitioners create the conflict between *Mennonite* and the Colorado Court of Appeals' decision in this case only by ignoring the express language of the applicable Colorado tax statutes. Those statutes not only provide that petitioners must be given notice of the connection costs as part of their tax bill, but also that there must be an opportunity for rebate or refund of any such taxes (in this case the connection costs), and a hearing, before the taxes become final. §§39-10-103, 39-1-113, 39-10-114, C.R.S., in the Appendix to this brief at pp. E-1 through E-3 and *Lamm* v. *Barber*, 192 Colo. 511, 565 P.2d 538 (1977). Accordingly, this Court should reject the petitioners' attempt to create a conflict between *Mennonite* and this case which does not exist.

II. The Three Lakes District was not Required to Provide Personal Notice and an Evidentiary Hearing for each Separate Residence or Business Before Ordering Connection to the Public Sewer.

At the heart of the controversy in this case is the Three Lakes District's power to require property owners to connect their busi-

nesses and residences to the public sewer system without providing individual notice and a separate evidentiary hearing for each residence and business. This Court has recognized that "[i]t is the commonest exercise of the police power of the state or city to provide for a system of sewers and to compel property owners to connect therewith", *Hutchinson* v. *City of Valdosta*, 227 U.S. 303, 308 (1913).[1] See also *District of Columbia* v. *Brooke*, 214 U.S. 138 (1909).

The property owner in *Hutchinson* v. *City of Valdosta* made the same argument being advanced here — that the connection proceedings deprived her of property without due process of law because she was given neither notice nor an opportunity to be heard as to her residence before being required to connect to the public sewer. This Court upheld the City's action to compel connection to the public sewer system even though Mrs. Hutchinson was not afforded individual notice and a hearing as to her specific property.

State courts have also held that personal notice and a separate evidentiary hearing are not required prior to ordering connection to a public sewer or water system. *Nourse* v. *City of Russellville*, 257 Ky. 525, 78 S.W.2d 761, 766 (1935); *Weber City Sanitation Commission* v. *Craft*, 196 Va. 1140, 87 S.E.2d 153, 160 (1955). The Florida Court of Appeals upheld an order requiring connection to a city sewer line and stated:

> It is well settled that the sanitary disposal of human waste is an essential function of a municipality. *A city sewerage system cannot effectively function upon a "tic-tac-toe" system, that is, connect one dwelling, skip a dwelling, and connect the next one.* Where one septic tank might not be injurious to a neighbor, two septic tanks could well be injurious to the health of the community. It is upon this premise that *legislative* acts have been properly enacted authorizing municipalities to construct and operate sewerage systems, and provide for the revenues to carry out such a commendable objective.

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[1] This Court has cited its *Hutchinson* decision with approval in *Queenside Hills Realty Co., Inc.* v. *Saxl*, 328 U.S. 80, 83 (1946).

People's Water Service v. *Adkinson*, 184 So.2d 707, 709 (Fla. 1966), (emphasis added). See also *Houpt* v. *County of Stephenson*, 63 Ill. App.3d 792, 380 N.E.2d 1060 (1978). Importantly, while petitioners argue that they are entitled to personal notice and an evidentiary hearing for each residence or business, they are unable to cite in their petition any case in which a court addressing the compelling connection issue ever required such notice and hearing.

The principle of *Hutchinson* and its state court counterparts is that proper sewage disposal and a pure water supply are so intimately connected with the health of the community that a person does not have a property right to maintain an individual septic or water system.[2] Since no protectible property right is involved, there are no due process guarantees of personal notice and an evidentiary hearing prior to requiring connection to the public sewers. The Colorado courts were thus correct in relying on the *Hutchinson* decision and the state court decisions from other jurisdictions.

The present case is therefore distinguishable from *Mennonite* and *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U.S. 360 (1950) because they involved actions clearly affecting property rights. Significantly, neither *Mennonite* nor *Mullane* concerned legislative acts of a local government and the exercise of the police power. In this regard, petitioners themselves admitted that there was "no taking" involved when the property owner in *Hutchinson* was ordered to connect to the public sewer system (Petition, p. 32).

The Colorado courts were also correct in determining that the connection order was a legislative act, and as such no individual notice and separate hearing were required before that order was made. The Three Lake District was created by the Colorado General Assembly to address the "serious water quality problems in the

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[2] In this particular case the state created no expectations that the petitioners had a property interest in their individual sewage systems. Evidence in the record demonstrated that the county granted permits for individual sewer systems within the Three Lakes District upon the basis that persons were required to discontinue use of such systems and connect their premises to a public sewer when it became available (Vol. I, pp. 143-148, 209).

Three Lakes area", §32-10-102(1) (a), C.R.S. The District's connection order applied to a large, open class of individuals — the 965 existing owners of residences and businesses and those persons who construct new buildings on property located within 400 feet of the District's lines. The legislature did not condition the exercise of the District's connection power on prior individual notice and hearing. §§32-10-117(4) and (5), C.R.S. (Appendix, pp. D-1, D-2).

It is crucial that the implications of the procedure advocated by the petitioners for compelling connection to a public sewer system be understood. In this case, the Three Lakes District would have been required to give personal notice and conduct over *965 separate hearings* at which evidence for each existing business and residence would have to be introduced, and additional hearings would be required for newly constructed residences and businesses; this procedure would render impossible the effective use of the police power to compel connection to a public sewer system.

III. The Petitioners Were Given Adequate Notice and Hearing Before Being Required to Connect to the District's Public Sewer Lines.

The Colorado courts correctly ruled that the Three Lakes District was not required by law to give personal notice and a separate evidentiary hearing before ordering connection to the public sewer. Nevertheless, since the very creation of the Three Lakes District, property owners within the District's boundaries, including petitioners, have been given notice and opportunities to be heard regarding connection to the District's public sewer lines.

In 1972 the Three Lakes District submitted to the Grand County Commissioners for their approval a comprehensive master plan for construction and operation of the regional public sewer system. Significantly, the proposed master plan concluded that all existing and future residences and businesses be required to connect to the District's regional public sewer system as soon as local collection lines were completed (Vol. I, pp. 303-304). Notice and hearing on the proposed master plan was conducted by the county commissioners and they approved the plan in March of 1973.

Once the District's regional sewer treatment system had been constructed, again published notice was given and a public hearing

held on requiring connection to the District's sewer lines. Notice of the April 26, 1982 public meeting was published in the *Sky-Hi News*, a newspaper of general circulation in Grand County. The large public attendance (over forty people) and the numerous written comments received by the District before the meeting attest to the adequacy of the District's notice. As the Grand County District Court ruled, had petitioners had any protectible interests in their individual sewer systems, the notice and hearings afforded by the master plan process and the 1982 public meeting were adequate (Appendix, p. A-11).

The District required *all* owners of inhabited premises located on property within 400 feet of the District's sewer lines to connect; there was no discrimination shown among owners. The Grand County District Court, after review of the evidence which indicated that the entire Three Lakes area was unsuited for individual sewer systems, determined that the connection order was amply supported by the record (Appendix, p. A-11).

The present case raises questions which can be decided only by review of the specific facts in the record regarding the notice given, the hearings held, and the evidence presented on the compelling connection issue. This Court has recognized that certiorari is not to be granted to review specific factual issues, as would be required here. *United States* v. *Johnston*, 268 U.S. 220, 227 (1925).

Furthermore, the controversy here relates only to the immediate Three Lakes area and the parties to this case, and does not involve any unsettled federal question.

IV. This Court Should Not Accept Jurisdiction to Consider Whether the Colorado Court of Appeals' Decision Properly Applied Colorado Law.

Petitioners conclude by arguing that the Colorado Court of Appeals erred in not following *Brown* v. *City of Denver*, 7 Colo. 305, 3 P. 455 (1884). (Petition, p. 33). The Colorado Supreme Court expressly distinguished the 1884 *Brown* decision and noted that the issue decided therein did not directly involve the exercise of the police power. *Thiele* v. *Denver*, 135 Colo. 442, 312 P 2d 786, 792-793 (1957). The Colorado Court of Appeals recognized this distinction

and, as a matter of state law, found that *Brown* was inapposite. The Colorado Supreme Court reviewed "the record, the briefs, and the opinion of said Court of Appeals" and decided to not grant certiorari to consider the petitioners' arguments about the *Brown* decision and the compelling connection issue (Appendix, p. C-1). The Court should not accept jursidiction to examine this question of Colorado state law. See, e.g., *Mullaney* v. *Wilbur*, 421 U.S. 684, 689 (1975).

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CONCLUSION

Based on the foregoing reasons, the respondent requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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DATED THIS NINTH DAY OF APRIL, 1986.

APPENDIX

A Orders dated January 25, 1983, February 3, 1984 and March 16, 1984 of the Grand County District Court.

B Opinion of Colorado Court of Appeals dated August 22, 1985.

C Order of the Colorado Supreme Court dated December 16, 1985.

D Pertinent provisions of the Three Lakes Water and Sanitation District Act.

E Pertinent Colorado statutes relating to the assessment and collection of taxes.

F Legal notice of the April 26, 1982 public hearing on compelling connection to the District's sewer lines.

APPENDIX A

DISTRICT COURT
COUNTY OF GRAND 82CV105 ORDER OF DISMISSAL
STATE OF COLORADO

WESLEY W. HOYT and RUTH KEENAN f/k/a RUTH LININGER,

Plaintiffs,

vs.

THE BOARD OF DIRECTORS OF THE THREE LAKES WATER AND
SANITATION DISTRICT, a Colorado Special District,

Defendant.

DISTRICT COURT
COUNTY OF GRAND 82CV109 ORDER OF DISMISSAL
STATE OF COLORADO

BETTY A. ALLEN a/k/a BETTY A. SMART, et al.,

Plaintiffs,

vs.

THREE LAKES WATER AND SANITATION DISTRICT,

Defendants.

THIS MATTER comes regularly before this Court on certain motions hereinafter described, and the Court being fully advised in the premises enters the following findings, conclusions and orders.

PROCEDURAL BACKGROUND

A. In Case No. 82CV105 the relevant pleadings are as follows:

On August 20, 1982 the Plaintiffs filed their Complaint under Rule 106 (a) (4) and their Motion for Order to Show Cause under Rule 106, C.R.C.P. in the District Court of Grand County. The Complaint asserts that the Defendant, through its board of directors, exceeded its jurisdiction and abused its discretion when it ordered the Plaintiffs to connect their inhabited premises to the Defendant's sewer lines, which are within 400 feet of the Plaintiffs' property.

An Order and Citation to Show Cause under C.R.C.P. 106 (a) (4) was issued by this Court on August 26, 1982 to the Defendant requiring it to certify its record relating to Plaintiffs' property and its order requiring connection to Defendant's sewer line.

On September 27, 1982 the Defendants answered the Plaintiffs' Complaint, counterclaimed requesting an order of this Court requiring the Plaintiffs to connect to Defendant's sewer line and pay appropriate tap fees, and raising an affirmative defense of estoppal [sic]. The Defendant on that date also filed a Motion to Dismiss Plaintiffs' Complaint and to quash the Order to Show Cause asserting that the decision to require Plaintiffs to connect to the district's system is not a proper subject for Rule 106, C.R.C.P. review since it was not a judicial or quasi judical decision. This motion was supported by memorandum.

On September 30, 1982 the secretary of the Defendant district certified to the Court the documents relating to a public hearing held by the Defendant on April 26, 1982. At this public hearing, generally, a resolution was adopted requiring all owners of inhabited properties within 400 feet of any of the Defendant's sewer lines to connect to said lines. It was further resolved that written notice be given to all such owners to connect within 20 days of receiving notice.

On October 6, 1982 the Defendant submitted a supplemental memorandum in support of its Motion to Quash filed September 27, 1982.

On October 12, 1982 the Plaintiffs filed their Reply denying the Defendant's Counterclaim.

On October 25, 1982 Plaintiffs filed their Motion to Consolidate Case 82CV105 with Case 82CV117 (which was properly Case 82CV109).

On October 15, 1982 Plaintiffs filed their Motion for Summary Judgment supported by a combined memorandum in opposition to the Defendant's Motion to Quash and in support of Plaintiffs' Motion for Summary Judgment.

On November 18, 1982 this Court consolidated Case No. 82CV105 into Case No. 82CV109 for purposes of discovery and motions hearings.

B. In Case No. 82CV109 the relevant pleadings are as follows:

On August 25, 1982 the Plaintiffs filed their Complaint under Rule 106, C.R.C.P. and for declaratory relief. The Complaint asserts that in entering its order requiring Plaintiffs to connect to Defendant's sewer lines, Defendant failed to find the connections were necessary for the protection of public health pursuant to 32-10-117(4), C.R.S., 1973, or if such a finding was made, it was not supported by evidence as to each of the Plaintiff's [sic] properties. It is further alleged that the order to connect was entered without notice and an opportunity to be heard given to the property owners, therefore a violation of due process, and thus making Defendant's order as to these Plaintiffs void and of no effect. The Plaintiffs also request that this Court, as part of the declaratory judgment, order that for the Defendant to compel connection to its sewer lines it must:

(a) Hold a hearing to determine if the public health necessitates connecting to the Defendant's sewer lines, and

(b) Give Plaintiffs notice and opportunity to be heard.

As a second claim, the Plaintiffs assert that they are members of a class and that the Court order requested should apply to all members of the class and that any stay entered by the Court also apply to all members of the alleged class.

On August 26, 1982 this Court entered its Order to Show Cause and Stay Proceedings.

On September 30, 1982 the Defendant filed its Answer and asserted a Counterclaim and Affirmative Defenses, generally denying Plaintiffs' Complaint, counterclaiming for an order of this Court requiring Plaintiffs to connect to the Defendant's sewer lines, payment of tap fees, asserting as an affirmative defense estoppal [sic] and laches, and finally that six of the Plaintiffs have filed covenants on their property agreeing to connect to a waste water system once service became available.

On September 30, 1982 Defendant also filed its Motion to Dismiss the Rule 106, C.R.C.P. proceeding and to quash the Order to Show Cause and Stay Proceedings entered August 26, 1982 by this Court. This motion also moved to dismiss Plaintiffs' claim for class action and for summary judgment. The grounds for dismissal stated in the motion are that Defendant's actions were not judicial or quasi judicial and, therefore, this Court lacks jurisdiction under Rule 106, C.R.C.P. As to the class action issue, the Defendant alleges failure of the Plaintiffs to assert specific facts which support their class action claim. On the claim for declaratory judgment, the Defendant asserts there is no material issue of fact, that Plaintiffs were given notice, and that summary judgment for Defendant should be entered. The motion is supported by memoranda and affidavits filed the same date.

On September 30, 1982 the secretary of the district certified to the Court the district's records relating to the approval of the resolution requiring the connection to the district's sewer lines, the record here being the same as in Case 82CV105.

On October 6, 1982 Defendant filed a supplemental memorandum to its motions of September 30, 1982.

On October 21, 1982 Plaintiffs filed their Reply to the Defendant's Counterclaim, an affirmative defense asserting various grounds why Plaintiff should not be required to connect to Defendant's system and denying the alleged estoppal [sic] or applicability of the doctrine of laches. The Reply also alleges that the covenants signed by some of the Plaintiffs may not be enforced by Defendant.

On November 8, 1982 Plaintiffs filed their Response to Defendant's motions to dismiss and for summary judgment.

On November 18, 1982 the Court granted the Plaintiffs' motion in 82CV105 to consolidate for purposes of discovery and motions hearing with 82CV109.

C. Proceedings Subsequent to Consolidation.

On November 19, 1982 Plaintiffs from 82CV109 filed their Motion for Summary Judgment on the ground that all matters of fact were of public record and there were no material issues of fact. The Plaintiffs' motion is supported by memorandum filed the same day supplementing their prior response and supporting their Motion for Summary Judgment.

On November 19, 1982 the Plaintiffs in 82CV105 amended their Reply to the Defendant's Counterclaim and generally asserted that Plaintiffs should not be ordered to connect to the Defendant's system because:

(1) They did not receive adequate notice of, nor were they given an opportunity to be heard at the hearing when the Defendants determined connection to its system was necessary to the public health on April 26, 1982.

(2) The findings regarding necessity for public health made on April 26, 1982 were not supported by evidence at the hearing and are an abuse of discretion.

(3) The Defendant has incurred a five million dollar indebtedness, which indebtedness was not submitted to the electors pursuant to 32-10-128, C.R.S., 1973, and Article IX, Section 6 of the Colorado Constitituion, consequently Plaintiffs cannot be compelled to connect.

(4) The Defendant has established tap fees without notice and hearing as required by 32-10-117(3), C.R.S., 1973, and the board has not made a finding that the Plaintiffs' property is within 100 feet of the service lines as required by Section 32-10-117(2).

On December 2, 1982 the Defendant filed its Response and reply brief in support of its Response to all Plaintiffs' Motions for Summary Judgment. In this Response the Defendant essentially converted all of its prior motions to dismiss to motions for summary judgment.

On December 3, 1982 the Court entered its Minute Order requesting that the parties advise regarding the motions which were at issue by January 3, 1983, and the Order set this matter for review on January 6, 1983.

On December 30, 1982 counsel for Defendant advised that there were pending three motions in Case No. 82CV105 and four motions in Case No. 82CV109.

On January 3, 1983 the Plaintiffs filed their combined Response to Defendant's Reply Brief filed December 2, 1982.

On January 5, 1983 the Plaintiffs' counsel in Case No. 82CV109 filed their advisement of pending motions listed as a fifth motion now pending in Case No. 82CV109 the Defendant's Motion to Dismiss Plaintiffs' Claim for Class Action filed September 30, 1982. These Plaintiffs also filed their Motion for Bifurcation of Issues on that date.

On January 6, 1983 the Defendant submitted its Reply to the Plaintiffs' Combined Response filed January 3, 1983 with the Court.

On January 6, 1983 the Court entered its Order terminating further pleadings pending a resolution of the motions then at issue. The Court also took all motions at issue under advisement so that it might review the pleadings in this proceeding and rule upon those motions properly at issued.

GENERAL BACKGROUND

The Three Lakes Water and Sanitation District was created by Senate Bill 317 adopted by the 48th General Assembly for the State of Colorado in 1971 (See 1971 Sessions Laws, Chapter 247, Page 1002). This legislation was prompted, according to the legislative declaration, Section 89-24-2, C.R.S., 1963, now Section 32-10-102 (1) (a), C.R.S., 1973 because:

"(a) Certain areas in this state possess natural characteristics which make them attractive for the building of seasonal homes and tourist facilities. There is an increasing need to build public facilities in such areas in order to accommodate the needs of the seasonal population. Many of these areas contain large federal land holdings which attract seasonal users. The increasing public use in such areas is leading to serious water quality problems, a factor of concern to all the citizens of this state. Such an area is the Three Lake area of Grand county, surrounding Grand lake, Shadow Mountain lake, and lake Granby. The general assembly thus declares that the creation of this district promotes the health, comfort, convenience, safety, and welfare of all the people of the state and visitors to the state, and will be of special benefit to the inhabitants of the district and the property therein."

Subsequent to its adoption in 1971, this legislation, which is now found in Article 10, Title 32, Section 101 through 179, C.R.S., 1973, has been amended several times but never repealed.

THE DISTRICT'S ORDER OF APRIL 26, 1982

According to the record before this Court, on April 26, 1982 a public hearing was held before the Board of Directors of the District, and at the conclusion of the hearing a resolution was adopted requiring property owners within the District where an inhabitated premises was located to connect to the District's sewer line if their property boundary was within 400 feet of the District's line. Notice of the hearing was published in the local newspaper, and numerous citizens appeared in opposition to the proposed order. The Board on that date also directed that notice be given to all such owners and that they be required to connect to the District's system within 20 days. At this hearing the Board of Directors also found that the connections were necessary for the public health (See records certified to this Court on September 30, 1982). Subsequent to this resolution, notice was sent to some or all of the Plaintiffs advising them that they would be required to connect to the Defendant's system, to make the connection and pay the fees required by the District. There is no issue, according to the plead-

ings, as to the material facts in this case. For a more detailed statement of the factual background, the Court notes the statements contained in pages two and three of the Defendant's memorandum filed on September 27, 1982 and September 30, 1982 in suppport of its motions to dismiss in both case No. 82CV105 and Case No. 82CV109.

PENDING MOTIONS

From the memoranda of the parties and the Court's own review of Case No. 82CV105 and Case No. 82CV109, it appears there were pending on January 6, 1983 and at issue the following motions:

Case No. 82CV105:

1. Defendant's Motion to Dismiss Plaintiffs' Complaint filed September 27, 1982. (This motion pursuant to pleadings filed December 2, 1982 and the language of the motion will also be considered as a motion for summary judgment under Item No. 5 below)

2. Defendant's Motion to Quash Order to Show Cause filed September 27, 1982.

3. Plaintiffs' Motion to Consolidate Case No. 82CV105 and Case No. 82CV109 filed October 25, 1982. (This motion was partially granted earlier and will now be considered for purposes of consolidation for further proceedings, if any)

4. Plaintiffs' Motion for Summary Judgment filed November 8, 1982.

5. Defendant's Motion for Summary Judgment as filed September 27, 1982 and December 2, 1982. (See Item No. 1 above)

Case No. 82CV109:

1. Defendant's Motion to Dismiss Plaintiffs' Complaint filed September 30, 1982. (This motion pursuant to pleadings filed December 2, 1982 will also be considered as a motion for summary judgment under No. 5 below)

2. Defendant's Motion to Quash Order to Show Cause and Stay Proceedings filed September 30, 1982.

3. Defendant's Motion to Dismiss Plaintiffs' Claim for Class Action filed September 30, 1982.

4. Plaintiffs' Motion for Summary Judgment filed November 19, 1982.

5. Defendant's Motion for Summary Judgment as filed September 30, 1982 and December 2, 1982. (See Item No. 1 above)

For purposes of this Order, the Court will consider the Defendant's motions in Case No. 82CV105 and 82CV109 numbered one, two and five conjunctively, and will also consider Plaintiffs' motion number four above in the conjunctive. The third motion in each case will be dealt with separately.

1. Defendant's Motion to Dismiss Plaintiffs' Claim for Relief Under Rule 106 (a) (4) is granted.

Defendant asserts that the Order of April 26, 1982 is not subject to the Rule 106 review. Section 32-10-117(4) and (5), C.R.S., 1973 provides as follows:

> "(4) The district is authorized to compel the owner of any business, dwelling, or other inhabited premises within the district to connect such premises, in accordance with the applicable plumbing code, to the water or sewer line, or to both such lines, if the board finds such connection necessary for the protection of public health, and if the service lines of the district are within four hundred feet of the nearest property line of such premises."
>
> "(5) The board shall give notice to compel such connection to such owner by registered or certified mail, return requested, to make such connection with twenty days of receipt of such notice, and if such connection is not begun within such period and completed with reasonable diligence by the owner, the board may thereupon make such connection, and the district shall, upon completion, have a first and prior lien on the premises for the cost of such

connection. Such lien shall be enforced in accordance with the provisions of section 32-10-121."

The leading case in Colorado on what is or is not subject to review under Rule 106 is *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975). At Page 374 is the following statement:

> "In order to support a finding that the action of a municipal legislative body is quasi judicial, all of the following factors must exist: (1) a state or local law requiring that the body give adequate notice to the community before acting; (2) a state or local law requiring that the body conduct a public hearing, pursuant to notice, at which time concerned citizens must be given an opportunity to be heard and present evidence; and (3) a state or local law requiring the body to make a determination by applying the facts of a specific case to certain criteria established by law."

From a review of the criteria quoted above, it appears to this Court that none of the criteria of *Snyder* apply. Subsection (4) of 32-10-117, C.R.S., 1973, requires no notice, hearing, and sets no criteria against which the facts of a specific case can be considered. At the very best, the general requirement of "necessary for the protection of public health" would establish only the last of the three requirements. (Assuming arguendo this Court could find any established criteria for what is necessary for the protection of public health).

As to the requirement for notice and hearing on constitutional grounds, the Court notes that the police powers of government have been recognized as being one of the least limitable powers and notice and hearing are not required by either state or federal constitution. *District of Columbia v. Brooke*, 214 U.S. 138, *Hutchinson v. City of Valdosta*, 277 U.S. 303, and also *Millis v. Board of County Commissioners of Larimer County*, 626 P.2d 652. As to the necessity for the rule, the Court notes the numerous cases cited by Defendant from other jurisdictions.

This Court has reviewed *Denver v. Eggert*, 647 P.2d 216 (1982), and in that case the Supreme Court there first determined that the only action the board of county commissioners could have taken was either revocation or suspension of an existing certificate

or the consideration of a new certificate. In either event the applicable statues, 30-20-103 and -104 for new certificates, and 30-20-112 for suspension of a certificate required hearing, notice, and the statutes also established certain specific criteria. The Supreme Court then went on to note that action of the commissoners in that case was quasi judicial rather than legislative, not only based on the statute but also based on some general concepts, which taken to their extreme, in this Court's opinion, would make nearly every action of a governing or legislative body quasi judicial and, therefore, subject to judicial review just as the Plaintiffs urge in this case. Such could not have been the intent of the Court in *Eggert*. In the present case there is no statutorily mandated notice, hearing or established criteria for the standard of necessary for the protection of public health. (See all of Title 32, Article 10). If the action of this board is compelling connection was quasi judicial, then presumably so was the state legislature's decision to enact Article 10 of Title 32, it being only a matter of degree as to the number of citizens affected.

Based on its reading of *Snyder*, supra and its progeny this Court concludes that the action of the Defendant was quasi legislative and not quasi judicial. Being legislative in nature, it is not subject to judicial review under Rule 106, C.R.C.P.

The Court would further note that if, in view of the *Eggert* decision, the action of the Defendant on April 26, 1982 should be determined to be a reviewable act, the action of the Defendant is amply supported by the record and would not be reversed by this Court. Adequate notice was given, as shown in the record, and Section 32-10-117(4), C.R.S. 1973 as interpreted by this Court, authorizes the District to compel connection of all owners who have inhabited premises within 400 feet of the District's lines. The argument that any cannot mean all seems to this Court to be a distinction without meaning since "any" surely includes the full spectrum of none to all. Having chosen to require all owners to connect, this Court will not limit the Defendant's authority by a strained interpretation when the obvious intended purpose of Section 32-10-117(4) is clear.

II. Defendant's Motion to Quash the Order to Show Cause in 82CV105 and 109 and the Order to Stay Proceedings in 82CV109 is granted.

Having granted the Defendant's Motion to Dismiss the Rule 106 proceeding, the Court also grants the Motion to Quash.

III. Plaintiffs' Motion for Summary Judgment is granted in part and denied in part.

The Plaintiffs' Motion for Summary Judgment on the issue of the Order to Compel Connection entered April 26, 1982 is denied in view of the ruling on the Rule 106 proceeding. Said motion is granted, however, as it relates to the Defendant's request in its Counterclaims for an order of this Court compelling connection to the District's system.

Section 32-10-117(5), C.R.S., 1973, provides the sole and only remedy for the District upon failure of anyone ordered to connect who fails to do so under the circumstances of this case. The Court made no ruling with regard to possible orders entered by a county or municipal board of health pursuant to other sections of the Colorado statutes upon findings of public health needs. The applicable section referred to in this article provides in part that "... if such connection is not begun within such period and completed with reasonable diligence by the owner, the board may thereupon make such connection, ..." This Court has no authority under any of the provisions of Article 10, Title 32 to order a property owner to connect to the Defendant's lines or pay fees. Likewise, the Court notes that the declarations required for individual sewer permits were required by county officials and, therefore, in this Court's opinion can be enforced only by the Board of County Commissioners, county health department or municipal health department, not by the Defendant.

For the above reasons, the Plaintiffs' Motions for Summary Judgment to the extent they relate to the Defendant's Counterclaims and request for affirmative relief are granted.

IV. Defendant's Motions for Summary Judgment as filed December 2, 1982 and September 26 and September 30, 1982 are granted in part and denied in part.

There appears to this Court to be no material issues of fact in this case once the ruling concerning the Rule 106 proceeding is reached. Certain Plaintiffs have requested declaratory relief in

conjunction with the obligation of the District to hold individual hearings and submit individual notice. In ruling on Item 1 above, the Court has reached conclusions contrary to the requests of Plaintiffs and, having done so, the motion of Defendants for summary judgment is granted as it relates to this request of the Plaintiffs. Defendant has requested in its counterclaim that this Court order the Plaintiffs to connect to Defendant's system. As to that issue, Defendant's Motion for Summary Judgment is denied (See Paragraph III above).

V. Plaintiffs' Motion to Consolidate as filed in Case No. 82CV105.

Having entered the orders stated above, the Court considers the Motion to Consolidate to be moot and, therefore, will not rule on that motion.

VI. Defendant's Motion to Dismiss Class Action in Case No. 82CV109.

Having entered the orders stated above, the Court considers the Motion to Dismiss Class Action to be moot and, therefore, will not rule on that motion.

The Court has also considered other assertions of the Plaintiffs and finds them to be without merit.

Based on the foregoing, this Court enters the following Orders:

1. The Complaint in Case No. 82CV105 shall be and hereby is dismissed.

2. The Counterclaims of the Defendant in Case No. 82CV105 shall be and hereby are dismissed.

3. The Order to show Cause in Case No. 82CV105 shall be and hereby is vacated.

4. The Complaint in 82CV109 shall be and hereby is dismissed.

5. The Counterclaims of the Defendant in Case No. 82CV109 shall be and hereby are dismissed.

6. The Order to Show Cause and Stay Proceedings in Case No. 82CV109 shall be and hereby is vacated.

7. Pursuant to Rule 54(b), C.R.C.P., this Court finds and determines that the above orders are final orders as to all claims raised by the parties to these proceedings and, therefore, enters a final judgment dismissing all claims of all parties. The parties may proceed immediately with appropriate motions for new trial and/or reconsideration as required by the Rules to preserve their right to appeal.

DATED this 25th day of January, 1983, at Steamboat Springs, Colorado.

BY THE COURT:

Richard P. Doucette, Judge

DISTRICT COURT, GRAND COUNTY, STATE OF COLORADO

Case No. 83CV99

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS, MOTION FOR DISSOLUTION OF STAY, MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR ATTORNEY'S FEES

PEARL ALPERSTEIN, et al.,
Petitioners,

v.

THREE LAKES WATER AND SANITATION DISTRICT,

Respondent

THIS MATTER comes regularly before this Court on the Defendant Three Lakes Water and Sanitation District's Motion to Dismiss the Rule 106 (a) (4) action, motion for dissolution of stay

under Rule 106, Motion for Summary Judgment on the Rule 57, C.R.C.P., portion of this action and Motion for Attorney's Fees filed on October 14, 1983. Having now reviewed the pleadings, record of proceedings, memorandum briefs of the parties, the records of this Court in Civil Action Nos. 82CV105 and 82CV109, and otherwise being fully advised in the premises, this Court finds, determines, concludes, rules and orders as follows:

This controversy arises out of the same action by the Defendant as gave rise to the proceedings in Case Nos. 82CV105 and 82CV109, which were dismissed by this Court on January 25, 1983. A copy of this Court's order in those two cases is attached hereto and by this reference incorporated herein and made a part hereof. The Court decision in those two cases is now on appeal to the Colorado Court of Appeals, Case No. 83CA1114. In this Court's opinion, all of the allegations contained in these Plaintiffs' Complaint must fail here for the same reasons as the Plaintiffs failed in the cases 82CV105 and 82CV109. There is nothing in these Plaintiffs' Complaint or the memoranda submitted by the parties that causes this Court to alter its decision on the same questions raised in Case Nos. 82CV105 and 82CV109.

By minute order dated November 18, 1983, this Court granted to the Plaintiffs' counsel 15 days from that date in which to file a response brief to the Defendant's reply brief indicating any differences between this case and Case 82CV105 and 82CV109. It is noted that counsel for these Plaintiffs was also counsel for the multiple Plaintiffs in Case No. 82CV109. No response brief has been filed, and it appears to this Court, upon review of the Complaint filed herein and the memorandum of the parties that there are no differences between these three cases. For that reason, the Court's decision in 82CV105 and 82CV109 will be adopted as the Court's decision in this case.

The Court would note that upon examination of the pleadings here it does appear that the Defendant has raised an issue regarding whether or not the Complaint by these Plaintiffs is frivolous and groundless under Section 13-17-101 (1), C.R.S., 1973, as Amended. As this Court reads the most recent decisions by the appellate courts regarding that statute, it would appear that the claim is without merit and shall be and hereby is denied. The Court

cannot resist commenting that in view of the most recent decisions it would appear frivolous and groundless to raise the question of frivolous and groundless. In any event, this Court enters the following orders:

1. The Defendant's motion filed October 14, 1983 to dismiss the Rule 105 (a) (4) action shall be and hereby is granted.

2. The Defendant's motion filed October 14, 1983 to dissolve the stay order entered under Rule 106 shall be and hereby is granted.

3. The Defendant's motion for summary judgment on the Rule 57, C.R.C.P. action shall be and hereby is granted.

4. The Defendant's motion filed October 14, 1983 for attorneys' fees shall be and hereby is denied.

DATED this 3rd day of February, 1984, at Hot Sulphur Springs, Colorado.

BY THE COURT:

Richard P. Doucette, Judge

DISTRICT COURT, GRAND COUNTY,
STATE OF COLORADO

Case No. 83CV99

(Filed District Court
March 19, 1984
Grand County, Colo.)

MINUTE ORDER

Pearl Alperstein, et al.,

Plaintiff,

v.

THREE LAKES WATER AND SANITATION DISTRICT,

Defendant.

The Court has now reviewed the Plaintiffs' brief filed 12-2-83 and the *Mennonite* case referred to therein. This Court does not believe that case overruled *Hutchison v. City of Valdosta*, 227 U.S. 303. Having reviewed all memoranda and cases cited the Court will not enlarge this file further by entering a new order but rather will incorporate herein in every detail except the reference to the Nov. 18, 1983 minute order, the order it entered on February 3, 1984. The order of February 3, 1984 is reinstated as of this date. The parties may proceed with their appeals.

Richard P. Doucette

APPENDIX B

COLORADO COURT OF APPEALS

No. 84CA0512

PEARL ALPERSTEIN, et al.,)
)
Plaintiffs-Appellants,)
)
v.)
)
THREE LAKES WATER AND SANITATION DISTRICT)
Defendant-Appellee.)

Appeal from the District Court of Grand County

Honorable Richard P. Doucette, Judge

DIVISION I
Opinion by JUDGE VAN CISE JUDGMENT AFFIRMED
Pierce and Sternberg, JJ., concur

Claiming that the district court erred in dismissing their C.R.C.P. 106 (a) (4) claim and in entering summary judgment against their requests for declaratory relief incident to an order of the defendant, Three Lakes Water and Sanitation District (the district), requiring them to connect to the district's sewer system, plaintiffs appeal. We affirm.

The 164 plaintiffs in this action are full or part-time residents in the area of Grand County surrounding Grand Lake, Shadow Mountain Lake, and Lake Granby (the Three Lakes). They own property on which are located "businesses, dwellings, and other inhabited premises." Most of them use their property as vacation homes in the summer months. They have individual systems such as septic tanks, leaching fields, and holding tanks for disposal of their sewage.

In 1971, the general assembly enacted the Three Lakes Water and Sanitation District Act (the Act), §32-10-101 et seq., C.R.S., to adress the water pollution problems in the Three Lakes area. Sections 32-10-117(4) and (5) of the Act provide:

"(4) The district is authorized to compel the owner of any business, dwelling, or other inhabited premises within the district to connect such prem' es, in accordance with the applicable plumbing code, to th e water or sewer line, or to both such lines, if the board finds such connection necessary for the protection of public health, and if the service lines of the district are within four hundred feet of the nearest property line of such premises."

"(5) The board shall give notice to compel such connection to such owner by registered or certified mail, return receipt requested, to make such connection within twenty days of receipt of such notice, and if such connection is not begun with such period and completed with reasonable diligence by the owner, the board may thereupon make such connection, and the district shall, upon completion, have a first and prior lien on the premises for the cost of such connection. Such lien shall be enforced in accordance with the provisions of section 32-10-121."

In 1972 the district submitted to the Grand County commissioners for their review and approval a comprehensive master plan for construction and operation of the district's regional public sewer system. The master plan provided that the owners of all existing and future residences and businesses would be required to connect to the district's regional system as soon as local sewage connection lines were completed. Public notice of the hearing on the adoption of the master plan was given, and the commissioners approved the plan at a public hearing on March 13, 1973.

The district's public sewer system was constructed pursuant to a federal grant. After the sewer system became operational in 1982, the district's board of directors met on April 26, 1982, to address the subject of connection of business and residential properties to the public sewer.

Notice of the meeting was provided by posting notice at the Grand County courthouse and the district's office and publishing a notice in the April 12, 1982, issue of a newspaper of general circulation in Grand county. The notice was as follows:

"PUBLIC NOTICE IS HEREBY GIVEN, that at a special meeting to be held on April 26, 1982, at 6:00 p.m., the Three Lakes Water and Sanitation District's Board of Directors will conduct a hearing on compelling the connection of businesses, dwellings and other inhabited premises to the District's sewage treatment facilities. The District is authorized to compel the connection of inhabited premises to the District's main service lines if the District's main service lines are within 400 feet of the nearest property line of said premises. The meeting will be held at the District's office, 1111 County Road 48 (a/k/a Golf Course Road), Grand Lake, Colorado."

The district received a number of letters prior to the meeting and over 40 members of the general public attended. They were provided with handouts upon their arrival at the meeting and were informed that they would be permitted to make brief public comments regarding connection and to submit any written documentation.

Present at the meeting were the acting Grand County sanitarian and the district engineer for the Colorado Department of Health. Both the sanitarian and the district engineer recommended that, for the protection of public health, the district require the owners of all inhabited premises located on property whose nearest boundary line is within 400 feet of the district's lines to connect to such lines. At the conclusion of the meeting, the district's board of directors adopted a resolution requiring sewer connections as recommended by the sanitarian and district engineer.

As required by §32-10-117 (5) of the Act, the district then sent out certified letters dated July 28, 1982, notifying 965 owners (including 117 of the plaintiffs in this case) of the requirement to connect to the district's sewer lines. The letter stated that "You are hereby notified that you are required to commence connection to the district sewer lines within twenty days and shall complete such connection with reasonable diligence." Subsequently, all landowners were notified by certified letter dated July 14, 1983, that the district was ordering them to connect to its sewer system. In response to this most recent letter, this action was filed with the district court on August 12, 1983, challenging the district's connection order.

Plaintiffs sought a declaratory judgment that the connection order was void, because: (1) the due process clauses of the United States and Colorado Constitutions prohibited the district from compelling any owners of property located within its boundaries to connect to its sewer lines unless the district provided the property owners with individual notice and the opportunity to present evidence at a judicial-type hearing; and (2) the statute under which the district issued its connection order required the district to make findings regarding each property owner who was compelled to connect to the sewer lines that this connection was required for the protection of the public health, and, therefore, the district was required to provide the landowners with notice and the opportunity for hearing before it could compel connection. Plaintiffs also sought a stay of the district's enforcement order under C.R.C.P. 106 (a) (4).

The district filed an answer, and then moved for dismissal of the C.R.C.P. 106 (a) (4) claim, for dissolution of an order staying the district from enforcing the connection order, and for summary judgment on the declaratory judgment claims. The court granted all of these motions. This appeal followed.

I

Section 32-10-117(4) of the Act states that the district can "compel the owner of any business, dwelling, or other inhabited premises within the district to connect such premises ... to the ... sewer line ... if the board [of the district] finds such connection necessary for the protection of public health ..." Plaintiffs contend that the district's power is conditioned on the board's *finding* that "such connection" is "necessary for the protection of public health." They argue that the district cannot "find" without having a hearing, and cannot have a hearing without first providing adequate notice to each "owner." Consequently, they assert, this statute requires that the district provide each owner the opportunity for a judicial-type evidentiary hearing prior to the district being empowered to compel that owner to connect to its sewer lines.

The district contends that the Act does not require personal notice to, and an evidentiary hearing for, each owner before the district can order connection. It points out that §32-10-117(5) of the

Act requires personal notice to the owner only *after* the district has determined the necessity of connection.

A plain reading of §§32-10-117(4) and (5) of the Act supports the district's position. The Act's notice provision applies only *after* the district has determined the necessity for connection. And that procedure is similar to the connection process which governs other local governments. *See, e.g.*, §30-20-416, C.R.S. (1977 Repl. Vol. 12) (counties); §31-35-601, C.R.S. (1977 Repl. Vol. 12) (municipalities); §32-1-1006, C.R.S. (1984 Cum. Supp.) (other water and sanitation districts). We do not view the statutory word "finds" in the context here as requiring a judicial type hearing and personal notice.

II.

Plaintiffs also contend that, if the statute does not require notice and hearing, the due process clauses of the United States and Colorado constitutions prohibit the district from compelling any owner to connect to its sewer lines unless it provides such owner with individual notice and an opportunity for a judicial type hearing. We regard *Hutchinson v. City of Valdosta*, 227 U.S. 303, 33 Sup. Ct. 290, 57 L.Ed. 520 (1913), and its progeny, as dispositive against plaintiffs on this issue.

In *Hutchinson*, the Supreme Court reviewed an ordinance passed by the City of Valdosta by which owners of homes abutting upon any street along which sewer mains have been laid were required to install toilets in their houses and to connect the same to the public sewer lines within 30 days from the date of passage of the ordinance. The court held that this was a valid exercise of the police power and that, although the ordinance afforded no prior personal notice or opportunity to be heard, it did not deny either due process or equal protection.

The *Hutchinson* court stressed that the connection order was for the welfare of the city's inhabitants and that "[i]t is the commonest exercise of the police power of a state or city to provide for a system of sewers and to compel property owners to connect therewith."

Hutchinson was cited with approval in *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 66 Sup. Ct. 850, 90 L.Ed. 1096

(1946). Numerous state courts have followed its holding that personal notice and a hearing are not required prior to ordering connection to a public sewer system. *See, e.g., Nourse v. City of Russellvilie*, 257 Ky. 525, 78 S.W.2d 761, 766 (1935); *Weber City Sanitation Commission v. Craft*, 196 Va. 1140, 87 S.E.2d 153, 160 (1955); *Houpt v. County of Stephenson*, 63 Ill. App.3d 792, 380 .E.2d 1060 (1978).

Plaintiffs' reliance on *Brown v. City of Denver*, 7 Colo. 305, 3 P. 455 (1884) is not well taken. The issue in *Brown* was not, as it is here, whether notice and hearing were required before the local government could act pursuant to its police power for public health and safety reasons. Rather the issue in *Brown* was how the city could recover its *expenses* from the exercise of its police power in constructing sidewalks for those owners of lots fronting upon a public street who had not complied with the city's order to construct sidewalks.

Our supreme court expressly distinguished the *Brown* case in *Thiele v. City & County of Denver*, 135 Colo. 442, 312 P.2d 786 (1957), where the court stated that the *Brown* decision related to assessments and not to the exercise of the police power. The holding in *Brown* on charges or assessments has no application to the issues in the present case.

The trial court correctly determined that neither the federal nor state constitutions mandated personal notice and evidentiary hearings prior to ordering connections.

III.

In view of our holding that neither the statute nor due process require personal notice and an opportunity to be heard before issuance of the connection order by the district, we do not address plaintiffs' contentions concerning the inadequacy of the notice and hearing provided or the reviewability of the district's order.

JUDGE PIERCE and JUDGE STERNBERG concur.

APPENDIX C

SUPREME COURT, STATE OF COLORADO
Case No. 85SC418
Certiorari to the Colorado Court of Appeals 84CA0512
Grand County District Court 83CV99

ORDER OF COURT

PEARL ALPERSTEIN, et al.,
Petitioners,

v.

THREE LAKES WATER AND SANITATION DISTRICT,

Respondent

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the brief, and the opinion of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, DECEMBER 16, 1985.

APPENDIX D

COLORADO REVISED STATUTES, TITLE 32
ARTICLE 10

Three Lakes Water and Sanitation District Act

32-10-101. Short title. This article shall be known and may be cited as the "Three Lakes Water and Sanitation District Act".

32-10-102. Legislative declaration. (1) The general assembly determines, finds and declares that:

(a) Certain areas in this state possess natural characteristics which make them attractive for the building of seasonal homes and tourist facilities. There is an increasing need to build public facilities in such areas in order to accommodate the needs of the seasonal population. Many of these areas contain large federal land holdings which attract seasonal users. The increasing public use in such areas is leading to serious water quality problems, a factor of concern to all the citizens of this state. Such an area is the three lakes area of Grand county, surrounding Grand lake, Shadow Mountain lake and lake Granby. The general assembly thus declares that the creation of this district promotes the health, comfort, convenience, safety, and welfare of all the people of the state and visitors to the state, and will be of special benefit to the inhabitants of the district and the property therein.

* * *

(f) The necessity for this article results from the population, growth, and development in the area included by this article and from the resultant pollution of Grand lake, Shadow Mountain lake, and lake Granby;

32-10-117. Water, sanitation - charge for availability - power to compel connection.

* * *

(4) The district is authorized to compel the owner of any business, dwelling, or other inhabited premises within the district to connect such premises, in accordance with the applicable plumbing

code, to the water or sewer line, or to both such lines, if the board finds such connection necessary for the protection of public health, and if the service lines of the district are within four hundred feet of the nearest property line of such premises.

(5) The board shall give notice to compel such connection to such owner by registered or certified mail, return receipt requested, to make such connection within twenty days of receipt of such notice, and if such connection is not begun within such period and completed with reasonable diligence by the owner, the board may thereupon make such connection, and the district shall, upon completion, have a first and prior lien on the premises for the cost of such connection. Such lien shall be enforced in accordance with the provisions of section 32-10-121.

32-10-121. Levy and collection of taxes. (1) To provide for the levy and collection of taxes, the board shall determine, in each year, the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy, not to exceed five mills in the taxable year 1972 and ten mills in each year thereafter, which, when levied upon every dollar of valuation for assessment of taxable property within the district, and together with other revenues, will raise the amount required by the district annually to supply funds for paying expenses in developing a master plan, expenses of organization, and the costs of constructing, operating, and maintaining the facilities and equipment of the district, and promptly to pay in full, when due, all interests on and principal of bonds and other obligations of the district. In the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 32-10-122.

(2) The board may apply a portion of such taxes and other revenues for the purpose of creating a reserve fund, or funds, in such amount as the board may determine, which may be used to meet the obligations of the district, for maintenance, operating expenses, depreciation, and extension of and betterment to the facilities of the district.

(3) The board, in accordance with the schedule prescribed by section 39-5-128, C.R.S., shall certify to the board of county commissioners of Grand county the rate so fixed in order that, at the

time and in the manner required by law for levying taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the district.

(4) All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall constitute, until paid, a perpetual lien on and against the property, and such lien shall be on a parity with the tax lien of other general taxes.

(5) Property taxes provided for in this article shall be levied, assessed, collected, remitted, and accounted for in the manner provided for other general ad valorem taxes.

APPENDIX E

COLORADO REVISED STATUTES, TITLE 39
ARTICLE 1

General Provisions

39-1-113. Abatement and refund of taxes. No abatement or refund of taxes erroneously or illegally levied shall be made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor shall have the opportunity to be present. Whenever any abatement or refund is recommended by the board of county commissioners, an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for his review pursuant to section 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all taxing jurisdiction receiving payment thereof. However, in no case shall an abatement or refund of taxes be made more than six years after the taxes were due.

ARTICLE 10

Collection

39-10-103. Tax Statement. (1) (a) As soon as practicable, after January 1, the treasurer shall mail to each person whose name appears on the tax list and warrant a statement showing the total amount of taxes payable by him, which statement shall separately list the amount of taxes levied on real and personal property and shall recite the amount of valuation for assessment upon which such taxes were levied. Failure of any person to receive such statement shall not preclude collection by the treasurer of the amount of taxes due from and payable by such person. Such statement shall include a notice that, if such person desires a receipt for payment of taxes, he shall request such receipt. The statement may also state what each mill levy would have been for each taxing district for the prior tax year based upon the current year's valuation for assessment.

(b) On and after January 1, 1988, each taxpayer's statement

required by paragraph (a) of this subsection (1) shall also separately list the mill levies and the amount of taxes to be credited to the state, the county, municipalities, school districts, special districts, and other districts within the county which are applicable to his property. This paragraph (b) shall be applicable for statements for 1987 taxes payable in 1988 and for each statement thereafter.

39-10-114. Abatement, cancellation of taxes. (1) (a) If taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, or clerical error, the treasurer shall report the amount thereof to the board of county commissioners, who shall proceed to abate such taxes in the manner provided by law. If such taxes have been collected by the treasurer, the board of county commissioners shall authorize refund of the same in the manner provided by law. However, in no case shall an abatement or refund of taxes be made more than six years after the taxes were due.

(b) Any taxes illegally or erroneously levied and collected, and penalty interest thereon, shall be refunded pursuant to this section, together with refund interest at the same rate as that provided for penalty interest set forth in section 39-10-104. Said refund interest shall accrue only from the date payment of taxes and penalty interest thereon was received by the treasurer.

(2) (a) Any taxes levied on personal property which are determined to be uncollectible after a period of six years after the date of their becoming delinquent may be cancelled by the board of county commissioners; except that taxes levied on any mobile home which after diligent search by the treasurer are determined to be uncollectible due to the removal of the mobile home from the county or other valid reason may be referred to the board of county commissioners for deletion from the tax rolls after a period of one year.

(b) When any real property has been stricken off to a county by virtue of a tax sale and there has been no transfer by the county of a certificate of purchase thereon, the taxes on such property may be determined to be uncollectible after a period of six years from the date of becoming delinquent, and they may be cancelled by the board of county commissioners. Such cancellation shall not affect the rights of the county under article 11 of this title to subsequently

transfer any tax sale certificate nor its right to receive a tax deed and to exercise its rights thereunder with respect to such property.

(3) The treasurer shall keep a complete record of all taxes abated, refunded, or determined to be uncollectible and cancelled by the board of county commissioners as provided in subsection (2) of this section.

APPENDIX F

PUBLIC NOTICE OF THREE LAKES WATER AND SANITATION DISTRICT HEARING ON COMPELLING CONNECTION TO DISTRICT'S SEWAGE TREATMENT FACILITIES:

PUBLIC NOTICE IS HEREBY GIVEN that at a special meeting to be held on April 26, 1982, at 6:00 p.m., the Three Lakes Water and Sanitation District's Board of Directors will conduct a hearing on compelling the connection of businesses, dwellings, and other inhabited premises to the District's sewage treatment facilities. The District is authorized to compel the connection of inhabited premises to the District's main service lines if the District's main service lines are within 400 feet of the nearest property line of said premises. The meeting will be held at the District's office, 1111 County Road 48 (a/k/a Golf Course Road), Grand Lake, Colorado.

THREE LAKES WATER AND SANITATION DISTRICT

(SEAL)

/s/ Martha H. Winters, Secretary